

medications, and steroid injections. Dr. Lewonowski continued to follow claimant until August 1996, when respondent redirected care to Ely Bartal, M.D. Dr. Bartal saw claimant on August 19, September 4, and September 18, 1996. On September 18, 1996, Dr. Bartal released claimant to return to work with restrictions and indicated claimant should return to see him if needed.

Claimant now asks for additional medical treatment. Rather than return to Dr. Bartal, claimant filed an Application for Preliminary Hearing and requested that Dr. Lewonowski be redesignated as the treating physician. At the conclusion of the evidentiary hearing, the Administrative Law Judge granted claimant's request.

Respondent argues that the Administrative Law Judge violated provisions of K.S.A. 1996 Supp. 44-510(c)(1) which states in pertinent part as follows:

"If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider."

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Anticipating this question, respondent cites the decision by the Appeals Board in Chilargi v. W. H. Braums, Inc., Docket No. 198,309 (June 1996). In that case, a decision rendered by one member of the Appeals Board, it was determined that a decision to change physicians without first allowing the respondent to provide a list of three physicians exceeds the jurisdiction of the Administrative Law Judge. In that case the decision by the Administrative Law Judge was, on that basis, reversed.

However, the majority of the Appeals Board views the issue of jurisdiction differently. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757(1977), as follows:

"Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly." (Citations omitted.)

The Workers Compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the

course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are designated as jurisdictional issues under K.S.A. 44-534a. Whether the Administrative Law Judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the Administrative Law Judge. The Administrative Law Judge may decide this question and has the jurisdiction to decide it wrongly.

WHEREFORE, the Appeals Board finds and concludes that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issues raised and the Order by the Administrative Law Judge dated November 7, 1996, should, and does, remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned Board Member disagrees with the majority opinion in this case on the basis of the logic stated in Chilargi v. W. H. Braums, Inc., Docket No. 198,309 (June 1996). This Board Member there stated the Administrative Law Judge should not have jurisdiction and authority to violate the clear provisions of statutory requirements. For that reason, this Board Member would reverse the decision by the Administrative Law Judge made in this case and, if services of the treating physician are found to be unsatisfactory, would allow the respondent to provide a list of three names from which claimant could choose one as the authorized treating physician.

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
Richard J. Liby, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director